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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF B.J.P.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 82A01-0603-JV-88
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
Cause No. 82D01-0603-JD-412

October 5, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-respondent B.J.P. appeals from the juvenile court's finding that he committed what would have been the crime of Voluntary Manslaughter,[1] a class B felony, had that offense been committed by an adult. Specifically, B.J.P. contends that two statements he had provided to the police were improperly admitted into evidence because his Sixth Amendment right to "confront himself" was violated. Appellant's Br. p. 18. He also argues that the finding of delinquency must be set aside because the State failed to rebut his claim of self-defense. Finding no error, we affirm the judgment of the juvenile court.

FACTS

At approximately 11:00 a.m. on September 27, 2005, Ronnie Wells approached the Evansville home of then sixteen-year-old B.J.P. B.J.P. and Wells had recently argued about the sale of a video game system, and Wells had accused B.J.P. of stealing his bicycle. At some point on September 27, Wells pushed B.J.P. and asked why he was talking "s***" about him. State's Ex. 41 at 4. In response, B.J.P. swung his fist at Wells and missed, and the two began to wrestle on the front porch of B.J.P.'s home. B.J.P. then ran from the porch and picked up a brick, intending to use it as a weapon. However, B.J.P. dropped it on the porch because it was too heavy. Although Wells desired to continue the fight inside the house, B.J.P. wanted to stay outside. By this time, Wells had retrieved a small baseball bat from the house. Wells struck B.J.P. in the head with the bat and hit him again when B.J.P. "charged" him. State's Ex. 4, 9.

B.J.P. tackled Wells, knocking him down, and the pair broke some glass windows as

[1] Ind. Code § 35-42-1-3.

they fought. At one point, Wells managed to place a headlock on B.J.P., but B.J.P. was able to break free and push a large piece of glass into Wells's body. B.J.P. then ran inside and retrieved two knives and a vegetable peeler from the kitchen, intending to use them to "cut" Wells if necessary. State's Ex. 41 at 4; State's Ex. 43 at 5. However, Wells collapsed, and it was subsequently determined that Wells's stomach, intestine, vena cava, and aorta had been cut. Wells died of his injuries.

On October 5, 2005, the State filed a delinquency petition alleging that B.J.P. had committed what would have been voluntary manslaughter and reckless homicide had those offenses been committed by an adult. At the fact-finding hearing conducted on January 26, 2006, B.J.P. asserted his right against self-incrimination and did not testify. However, over B.J.P.'s objection, the State was permitted to introduce two statements into evidence that B.J.P. had made to the police—one on the day of Wells's death and one that he gave the next day. After considering the substance of the statements and hearing the other evidence, the juvenile court found B.J.P. delinquent on the voluntary manslaughter count[2] and made him a ward of the Department of Correction. B.J.P. now appeals.

DISCUSSION AND DECISION

I. Admission of Statements

B.J.P. claims that two out-of-court statements that he made to police officers were improperly admitted into evidence at the dispositional hearing. Specifically, B.J.P. argues

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[2] The juvenile court determined that Count II of the petition was moot. Appellant's App. p. 183.

that the admission of the recorded statements violated his right of confrontation under the Sixth Amendment to the United States Constitution.

In resolving this issue, we first note that the decision whether to admit or exclude evidence is left to the sound discretion of the trial court. Doty v. State, 730 N.E.2d 175, 178 (Ind. Ct. App. 2000). The trial court's ruling will generally not be reversed on appeal absent a manifest abuse of discretion that results in the denial of a fair trial. Zawacki v. State, 753 N.E.2d 100, 102 (Ind. Ct. App. 2001). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Myers v. State, 718 N.E.2d 783, 789 (Ind. Ct. App. 1999). We consider the totality of the circumstances and, without reweighing evidence and considering conflicting evidence most favorable to the trial court's ruling, determine if there was substantial evidence of probative value to support the trial court's ruling. Griffith v. State, 788 N.E.2d 835, 839-40 (Ind. 2003).

Here, B.J.P. alleges that the admission of his statements violated his right of confrontation in accordance with the rule announced in Crawford v. Washington, 541 U.S. 36 (2004). In essence, the Crawford court determined that the admission of testimonial evidence in criminal trials without a showing of unavailability and a prior opportunity for cross-examination by the defendant was barred by the confrontation clause of the Sixth Amendment. Id. at 68-69. However, B.J.P. fails to explain how he might have cross-examined himself. And this court has determined that no such right exists. See Johnson v. State, 832 N.E.2d 985, 999 (Ind. Ct. App. 2005) (recognizing that because a defendant has no

right to confront himself, his claim has no merit). For these reasons, we conclude that the juvenile court did not abuse its discretion in admitting B.J.P.'s statements into evidence.

II. Sufficiency of the Evidence and Self-Defense

B.J.P. argues that the voluntary manslaughter finding cannot stand. Specifically, B.J.P. contends that the State failed to present sufficient evidence to rebut B.J.P.'s claim of self-defense beyond a reasonable doubt.

In resolving this issue, we first note that when a defendant raises a self-defense claim, he is required to show that he was in a place where he had a right to be, acted without fault, and had a reasonable fear of death or great bodily harm. Ind. Code § 35-41-3-2; Wallace v. State, 725 N.E.2d 837, 840 (Ind. 2000). The amount of force exerted to protect oneself must be proportionate to the urgency of the situation. Hollowell v. State, 707 N.E.2d 1014, 1021 (Ind. Ct. App. 1999). However, a person is not justified in using force if "the person has entered into combat with another person or is the initial aggressor unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action." I.C. § 35-41-3-2(e)(3).

We also note that the State must disprove only one element of self-defense beyond a reasonable doubt. Brooks v. State, 683 N.E.2d 574, 577 (Ind. 1997). The State may rebut a self-defense claim by relying on evidence elicited in its case in chief. Miller v. State, 720 N.E.2d 696, 700 (Ind. 1999). Whether the State has met its burden is a question of fact for the factfinder. Id. Also, when reviewing whether the State negated the defendant's claim of

self-defense beyond a reasonable doubt, we apply the same standard as in any other challenge to the sufficiency of the evidence. Wallace, 725 N.E.2d at 840. This court neither reweighs the evidence nor judges the credibility of witnesses. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). We look only to the evidence most favorable to the judgment and the reasonable inferences therefrom. See id. Evidence is insufficient only when no rational factfinder could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000). If there is substantial evidence of probative value to support the judgment, we will affirm the conviction. Sanders, 704 N.E.2d at 123.

In this case, while the evidence may not have demonstrated that B.J.P. was the initial aggressor, there is substantial evidence that B.J.P. entered into combat with Wells and no evidence whatsoever that he either withdrew or communicated an intent to withdraw. Specifically, after Wells's initial push, B.J.P. swung at Wells and missed and the two began to wrestle on the front porch. B.J.P. ran outside and picked up a brick, intending to use it as a weapon. While B.J.P. wanted Wells to leave the residence, he admitted that it was only because he wanted to continue the fight outside. State's Ex. 41 at 12-13, 16. B.J.P. then "charged" Wells after he hit B.J.P. in the head with the bat. B.J.P. threw Wells to the floor of the porch and the pair broke some glass windows as they fought. Id. at 4. While Wells managed to place B.J.P. in a headlock, B.J.P. broke free and pushed a large piece of glass into Wells. Even after the stab wounds had caused Wells to fall, the evidence demonstrated that B.J.P. was still interested in continuing the fight. In particular, B.J.P. ran inside the residence and retrieved two knives and a vegetable peeler from the kitchen, intending to use

them to "cut" Wells if necessary. Id.

When examining this evidence, it is apparent that B.J.P. had a number of opportunities to withdraw from the fight but took advantage of none of them. B.J.P. could have withdrawn when he broke free from Wells's headlock. Instead, B.J.P. stabbed him. In essence, none of B.J.P.'s actions—even by his own admissions—indicated the slightest intent to withdraw and, indeed, are entirely consistent with his admission that he would not "back down" from Wells. Id. at 25. Hence, we conclude that the State produced sufficient evidence to rebut B.J.P.'s claim of self-defense and we decline to set aside the juvenile court's finding of voluntary manslaughter on this basis.

The judgment of the juvenile court is affirmed.

VAIDIK, J., and CRONE, J., concur.